

TENNESSEE REGULATORY AUTHORITY

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Sara Kyle, Chairman
Deborah Taylor Tate, Director
Pat Miller, Director
Ron Jones, Director



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460 James Robertson Parkway
Nashville, Tennessee 37243-0505

IN REGULATORY AUTHORITY
DOCKET ROOM

MEMORANDUM

TO: Chairman Sara Kyle
Director Pat Miller
Director Ron Jones

FROM: Eddie Roberson, Chief, Consumer Services Division
Ed Mimms, Manager, Do Not Call Program *ER*
Lynn Questell, Counsel *LQ*

DATE: March 27, 2003

SUBJECT: Settlement with GutterGuard of Tennessee, Inc. (Docket No. 03-00082)

Attached is a Settlement Agreement between the Consumer Services Division ("Staff") and GutterGuard of Tennessee, Inc. (hereafter referred to as "GutterGuard") for violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statute, TCA §65-4-401 *et seq.* GutterGuard has been registered as a solicitor with the Tennessee Regulatory Authority ("Authority") since March 30, 2001.

Ten (10) separate complaints have been registered against GutterGuard with the Authority alleging that the company violated TCA §65-4-401 *et seq.* Nine of the complaints were registered from May 15, 2002 through October 29, 2002. The tenth complaint was registered with the Authority on February 10, 2003. This Settlement requires GutterGuard to make a payment of \$17,000 to the Authority along with assurances from GutterGuard that it will fully comply with applicable state law. The terms of this Settlement require GutterGuard to pay \$5,000 to the Authority on the first business day of the month following the Authority's ratification of the Settlement with the remaining amount to be paid in six (6) monthly installments of \$2,000. A representative for GutterGuard will be available at the April 7, 2003 Conference to answer any question you may have.

Considering all relevant facts, the Staff believes the terms of this Settlement are fair and reasonable and should have the result of no additional telemarketing complaints being filed against GutterGuard. Staff submits the attached Settlement Agreement for your deliberation at the April 7, 2003 Authority Conference.

cc: Director Deborah Taylor Tate
Richard Collier, General Counsel
Gary D. Hooper, Counsel for GutterGuard

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

IN RE:

**Alleged Violations of Tenn. Code Ann. § 65-4-401
et seq. and Rules of Tennessee Regulatory Authority
Consumer Services Division Chapter 1220-4-11**

GutterGuard of Tennessee, Inc.

**DOCKET NO.
03-00082**

Consumer Services Division

File No. T02-00297

T02-00378

T02-00424

T02-00469

T02-00514

T02-00532

T02-00535

T02-00555

T02-00584

T03-00059

SETTLEMENT AGREEMENT

This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("Authority" or "TRA") and GutterGuard of Tennessee, Inc. ("GutterGuard") and its affiliate, Dixie Homecrafters of Tennessee, Inc. ("Dixie Homecrafters"). This Settlement Agreement pertains to alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations, Tenn. Code Ann. § 65-4-401, *et seq.*, and Tenn. Comp. R. & Regs. 1220-4-11.07, ascertained during the preliminary investigation the CSD conducted in this matter, including ten (10) consumer complaints against GutterGuard received by

the CSD. This Settlement Agreement is subject to the approval of the Directors of the TRA.

The CSD's investigation in this docket commenced after it received a complaint on May 14, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from GutterGuard on May 9, 2002. The CSD provided GutterGuard with notice of this complaint on May 16, 2002.

Between June 20, 2002 and February 7, 2003, the CSD received nine (9) additional consumer complaints against GutterGuard, each alleging that a person acting on behalf of GutterGuard made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register. The CSD provided GutterGuard with notice of each of these complaints.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11.07(1) prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by GutterGuard in this proceeding is twenty thousand dollars (\$20,000), arising from the ten (10) allegedly improper telephone solicitations.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in Tenn. Code Ann. § 65-4-116(b), including the company's size, financial status, good

faith, and the gravity of the violation. The corporate headquarters of GutterGuard's parent company, GutterGuard, Inc., is in Atlanta, Georgia, with offices in Columbus, Georgia, Charlotte, North Carolina, Greenville, South Carolina, Memphis, Tennessee, Nashville, Tennessee and Philadelphia, Pennsylvania. GutterGuard employs approximately one hundred (100) persons in the state of Tennessee. GutterGuard registered in the Do-Not-Call Program for the 2002-2003 fiscal year on June 13, 2002. After receiving notice of the complaints, GutterGuard contacted the CSD and expressed an interest in settling this matter and in obtaining technical assistance to assure future compliance with the applicable Tennessee statutes and regulations. In addition, GutterGuard registered its affiliate, Dixie Homecrafters, with the TRA as a telephone solicitor on March 17, 2003.

In an effort to resolve the alleged violations revealed during the CSD's investigation, including the complaints represented by the file numbers captioned above and any other complaints whether known or unknown by the CSD prior to the execution of this Settlement Agreement, the CSD and GutterGuard agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

1. GutterGuard neither admits nor denies that the ten (10) complaints against it are true and valid complaints and that it acted in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11.07.
2. Since receiving notice of the complaints that are the subject of this Agreement, GutterGuard has attempted to come into compliance with Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11.07. GutterGuard contacted CSD and

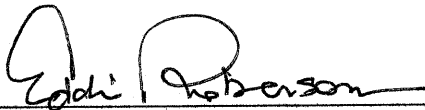
expressed an interest in taking action to prevent noncompliance in the future. In addition, GutterGuard registered its affiliate, Dixie Homecrafters with the TRA as a telephone solicitor on March 17, 2003 and receives a monthly copy of the Do-Not-Call register.

3. GutterGuard agrees to pay on its behalf and on behalf of its affiliate, Dixie Homecrafters, the amount of seventeen thousand dollars (\$17,000.00) in settlement of these complaints. The first payment, in the amount of five thousand dollars (\$5,000.00), shall be remitted to the Office of the Chairman of the TRA no later than the first business day of the month following the date the panel of Directors assigned to this docket approves this Settlement Agreement.¹ The remaining twelve thousand dollars (\$12,000) will be paid by GutterGuard in six (6) installments of two thousand dollars (\$2,000.00) and each shall be remitted to the TRA no later than the first business day of each month for the next six (6) consecutive months. Upon payment of the amount of seventeen thousand dollars (\$17,000.00) in compliance with the terms and conditions of this Settlement Agreement, GutterGuard is excused from further proceedings in this matter.
4. GutterGuard agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.
5. GutterGuard agrees that a company representative will attend the Authority Conference during which the Directors consider this Settlement Agreement.
6. In the event that GutterGuard fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket.

¹ The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing TRA Docket No. 03-00082.

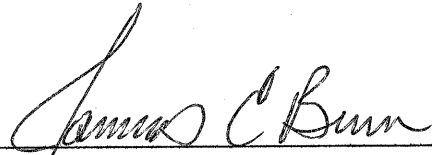
GutterGuard shall pay any and all costs incurred in enforcing the Settlement Agreement.

7. If any clause, provision or section of this Settlement Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
8. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.



Eddie Roberson
Chief, Consumer Services Division
Tennessee Regulatory Authority

3-27-03
Date



Signature

James E. Brewer

Print Name

President Dixie Home Crafters Inc.
GutterGuard Inc.

Print Title

3-21-03
Date